C JEGATHESAN

v.

AHMAD HAMZAH & ANOR

HIGH COURT MALAYA, KOTA BHARU
MUHAMMAD KAMIL AWANG J
[CIVIL SUIT NO: 22-57-1997]
18 OCTOBER 2000

CIVIL PROCEDURE: *Pleadings - Striking out - Defendant entered unconditional appearance - Whether precluded from applying to strike out under O. 18 r. 19(1) Rules of the High Court 1980*

The sole issue in the instant appeal was whether a defendant who has entered an unconditional appearance is precluded from applying to strike out a pleading under O. 18 r. 19(1)(a) of the Rules of the High Court 1980 ('RHC').

Held:

[1] An application under O. 18 r. 19(1)(a) RHC may be made "at any stage of the proceedings". Therefore, the filing of an unconditional appearance does not preclude the filing of an application under O. 18 r. 19.

[Order accordingly.]

Case(s) referred to:
Alor Janggus Soon Seng Trading Sdn Bhd v. Sey Hoe Sdn Bhd [1995] 1 CLJ 461 ***(not foll)***
Bank Bumiputra Malaysia Bhd & Anor v. Lorrain Esme & Another Action [1987] 2 MLJ 633 ***(foll)***
Jamir Hassan v. Kang Min [1991] 3 CLJ 2490 ***(foll)***
Lim Seak Huat v. Malayan United Realty Sdn Bhd [1997] 5 CLJ 336 ***(not foll)***
N Carrupaiya v. MBf Property Services Sdn Bhd & Anor [2000] 4 CLJ 116 ***(foll)***
Pet Far Eastern (M) Sdn Bhd v. Tay Young Huat [1999] 2 CLJ 866 ***(not foll)***
Tengku Jaafar v. Karpal Singh [1993] 4 CLJ 183 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 12 rr. 6, 7, O. 18 r. 19(1)(a)

Other source(s) referred to:
Mallal's Supreme Court Practice, 2nd edn, p 68

Reported by S Dharmendran

JUDGMENT

Muhammad Kamil Awang J:

At the onset of the appeal against the decision of the learned SAR in striking out the appellant's counter claim under O. 18 r. 19(1)(a) of the Rules of the High Court 1980, the appellant raised a preliminary issue whether the appellant was entitled to invoke O. 18 r. 19(1)(a) Rules of the High Court in the light of the respondent having filed a reply and defence to the appellant's defence and counter-claim.

The appellant submitted that as the respondent had entered an unconditional appearance, ie, by filing the defence and a reply thereto, the respondent was estopped from applying for a summary judgment under O. 18 r. 19(1)(a) Rules of the High Court. He relied on the authorities of *Alor Janggus Soon Seng Trading Sdn Bhd v. Sey Hoe Sdn Bhd* [1995] 1 CLJ 461; *Lim Seak Huat v. Malayan United Realty Sdn Bhd* [1997] 5 CLJ 336; and *Pet Far Eastern (M) Sdn Bhd v. Tay Young Huat* [1999] 2 CLJ 866.

The respondent submitted that it is settled law that a party may apply to strike out the pleading, at any stage of the proceedings. The filing of an unconditional appearance does not preclude a party from making an application to strike out a pleading under O. 18 r. 19(1)(a) Rules of the High Court, and the authorities cited in support are *Bank Bumiputra Malaysia Bhd & Anor v. Lorrain Esme & Another Action* [1987] 2 MLJ 633; *Jamir Hassan v. Kang Min* [1991] 3 CLJ 2490; *Tengku Jaafar v. Karpal Singh* [1993] 4 CLJ 183; and *N Carrupaiya v. MBf Property Services Sdn Bhd & Anor* [2000] 4 CLJ 116.

Order 18 r. 19 of the RHC states:

> 19. Striking out pleadings and indorsements
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> (1) The Court may **at any stage of the proceedings** order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that:
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> (a) it is discloses no reasonable cause of action or defence, as the case may be; or
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> (b) it is scandalous, frivolous or vexatious; or
>
> (c) it may prejudice, embarrass or delay the trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a);

(3) This rule shall, so far as applicable, apply to an originating summons and petition as if the summons or petition, as the case may be, were a pleading. (emphasis added)

It is clear that an application under r. 19 of O. 18 may be made "at any stage of the proceedings". It means that an application under r. 19 may be made at any time in the course of the proceedings before the trial commence. The r. 19 does not admit of any intervention or pre-requisite to its operation. There is no bar to the making of an application under O. 18 r. 19 and more importantly, the filing of an unconditional appearance does not preclude the filing of an application under O. 18 r. 19.

In a most recent case of *N Carrupaiya (supra)* the court held that the filing of an unconditional appearance does not preclude a defendant from making an application to strike out under O. 18 r. 19 of the RHC. See also *Bank Bumiputra Malaysia Berhad* case *(supra)*; *Jamir Hassan*'s case *(supra)*; and *Tengku Ja'afar* case *(supra)*. This seems to be in consonant with the meaning and purpose of a conditional appearance as stated in O. 12 rr. 6 & 7 and in *Mallal's Supreme Court Practice*, 2nd edn, at p. 68.

The *obiter dictum* in *Alor Janggus*'s case *(supra)* as followed by the learned judge in *Lim Seak Huat* and *Pet Far Eastern (M) Sdn. Bhd.* does not throw much light to the court as to the correct pronouncement of the said r. 19.

In the circumstances, the court held that the respondent was entitled to invoke O. 18 r. 19 in this case. Costs to the respondent.